

1 THE HONORABLE RICHARD A. JONES

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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON

10 WASHINGTON STATE PHARMACY
11 ASSOCIATION, NATIONAL ASSOCIATION OF
12 CHAIN DRUG STORES, NATIONAL COMMUNITY
13 PHARMACISTS ASSOCIATION, SHIRAZ
14 SPECIALTY PHARMACY, CAMMACK'S
15 PHARMACY, INC., RITZVILLE DRUG COMPANY,
16 SOAS, LLC, CAMP RILEY DRUG COMPANY d/b/a
17 PHARM-A-SAVE, and GENOA HEALTHCARE,
18 LLC,

19 Plaintiffs,

20 vs.

21 CHRISTINE GREGOIRE, not individually, but Solely
22 in her official capacity as Governor of the State of
23 Washington, SUSAN N. DREYFUS, not individually,
24 but solely in her official capacity as Interim Secretary
25 of the Washington State Department of Social and
26 Health Services, DOUG PORTER, not individually, but
in his official capacity as Assistant Secretary of the
Health and Recovery Services Administration,
Washington State Department of Social and Health
Services, THE WASHINGTON STATE
DEPARTMENT OF SOCIAL AND HEALTH
SERVICES, and HEALTH AND RECOVERY
SERVICES ADMINISTRATION,

Defendants.

NO. C09-1377 RAJ

DECLARATION OF
GEORGE D. BARTELL

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C09-1377 RAJ

Exhibit 20, p. 1

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DECLARATION OF GEORGE D. BARTELL

I, George D. Bartell, declare as follows:

1. I make this declaration in support of the Motion for Preliminary Injunction filed in this matter. The facts set forth here are true of my own personal knowledge, and if called upon to testify, I would do so under oath.

2. I am the Chairman and CEO and also a shareholder of Bartell Drugs, which operates 57 pharmacies, all licensed in the State of Washington. Our corporate address is 4727 Denver Ave. South, Seattle. I have worked for Bartell Drugs and been a shareholder for more than 35 years. I became President of Bartell Drugs in 1990 and Chairman and CEO in the late 1990s. Bartell Drugs has operated in the State of Washington since 1890 and is recognized as the oldest chain drugstore operator in the country. Further, we have been recognized by the Washington Secretary of State as a Century Corporation.

3. Bartell Drugs is a member of the Washington Retail Association, and the National Association of Chain Drug Stores.

4. As part of Bartell Drugs' pharmacy practice and business, we provide drug products and services to Medicaid beneficiaries who reside in Washington. We fill approximately 200,000 Medicaid prescriptions per year.

5. Services provided include dispensing of prescription medications and devices, consulting regarding the proper use of prescription and OTC drugs, vitamins, herbals, and administration of vaccines.

6. The current rate of Medicaid reimbursement for branded drug products decreased on September 26th. In anticipation that this court will halt recent reimbursement reductions, we have nevertheless continued to serve Medicaid beneficiaries.

7. I understand that the United States District Court for the District of Massachusetts has approved two settlements in the action captioned *New England*

Carpenters Union Health Benefits Fund v. First DataBank, Inc. It is my understanding that the approved settlements resulted in a reduction in Average Wholesale Price ("AWP") by approximately four percent for over 1,442 National Drug Codes ("NDCs"), including such popular medications as Lipitor, Prozac, Nexium, Plavix, Wellbutrin, Ambien, Prilosec, Zantac, Valtrex, Zyprexa, Celebrex, Imitrex, Risperdal, Seroquel, and Neurontin on September 26, 2009. In addition, it is my understanding that First DataBank and Medi-Span have reduced reported AWP for thousands of other NDCs on that same date.

8. The net result of the September 26, 2009 AWP reductions will be a total reduction of almost 4% for AWP's.

9. Almost all health plans, Pharmacy benefits Managers and other payors use AWP as a benchmark for calculating reimbursement payments to our pharmacies. Virtually all of those payors in the private marketplace have agreed to revise their methods of calculating reimbursement to offset the recent AWP reductions by First DataBank and Medi-Span. As a result, reimbursement by payors other than the Washington Medicaid program have not been cut as a result of the AWP reductions.

10. Unfortunately, unlike virtually all other payors with whom we work, the Washington Medicaid program has not taken steps to adjust their reimbursement rates to offset the AWP reductions.

11. Washington sets Medicaid reimbursement for the ingredient cost of a dispensed prescription at AWP - 16%. This reimbursement rate was already reduced by 2% earlier this year. The 4% reduction of AWP's is a serious and significant reduction of the reimbursement our pharmacies will receive for prescription drugs.

12. This reimbursement reduction was imposed without any public notice or opportunity for comment.

13. This rate reduction will significantly affect my ability to continue to provide services to Medicaid patients. For many drugs, the total reimbursement will not cover

the amount I pay to purchase the drugs from my suppliers, and will cover nothing towards my dispensing cost.

14. I believe my patients who depend upon Medicaid for their medical services will suffer as a result of the September 26, 2009 reimbursement cut. Our pharmacies may no longer be able to afford to provide medications to such patients where reimbursement is below my acquisition cost for the drug product. Moreover, the combination of drug product reimbursement and dispensing fee will not cover our break even cost of dispensing the vast majority of branded pharmaceutical drug product to Medicaid beneficiaries. As a result, the Medicaid patients we currently serve may not have access, or at least immediate access, to pharmacy products and services at our pharmacies and will be forced to look elsewhere for those products and services.

15. We would prefer to continue to treat Medicaid patients because they are our patients and they rely on us. In many cases, however, due to the September 26, 2009 reimbursement cut, we may not be able to continue to operate all of our pharmacies; continue to accept new Medicaid patients, be able to fill all Medicaid prescriptions in all of our stores or fill prescriptions for certain high cost drugs including AIDS medications and anti-psychotropics. We may find it necessary to cut business hours in some stores; to layoff employees; and/or reduce the scope of services we currently provide. The services that are provided by Bartell Drugs should be recognized for the value to Washington communities, the patients we serve and the state as a whole.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed on October 14, 2009, at Seattle, Washington.


George D. Bartell

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